

08 CIV. 3766

JS 44C/SDNY
REV. 12/2005

JUDGE COTE

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS

DEFENDANTS

Kalman Konsistorum

Craig M. Schiff

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Eustace & Marquez

1311 Mamaroneck Avenue

White Plains, N.Y. 10601 (914) 989-6650

ATTORNEYS (IF KNOWN)

Gratt & Associates, P.C.

485 Lorimer Street

Brooklyn, New York 11211

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

28 USC 1441 and 1446 - Personal Injury case removed based upon diversity

Has this or a similar case been previously filed in SDNY at any time? No ☒ Yes? ☐ Judge Previously Assigned

APR 21 2008

If yes, was this case Vol ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date _____ & Case No. _____

(PLACE AN (x) IN ONE BOX ONLY)

NATURE OF SUIT

ACTIONS UNDER STATUTES

TORTS		FORFEITURE/PENALTY		BANKRUPTCY		OTHER STATUTES	
CONTRACT	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 610 AGRICULTURE	<input type="checkbox"/> 422 APPEAL	<input type="checkbox"/> 400 STATE		
<input type="checkbox"/> 110 INSURANCE	<input type="checkbox"/> 310 AIRPLANE	<input type="checkbox"/> 362 PERSONAL INJURY -	<input type="checkbox"/> 620 FOOD & DRUG	<input type="checkbox"/> 28 USC 158	<input type="checkbox"/> REAPPORTIONMENT		
<input type="checkbox"/> 120 MARINE	<input type="checkbox"/> 315 AIRPLANE PRODUCT	<input type="checkbox"/> MED MALPRACTICE	<input type="checkbox"/> 625 DRUG RELATED	<input type="checkbox"/> 423 WITHDRAWAL	<input type="checkbox"/> 410 ANTI-TRUST		
<input type="checkbox"/> 130 MILLER ACT	<input type="checkbox"/> LIABILITY	<input type="checkbox"/> 365 PERSONAL INJURY	<input type="checkbox"/> SEIZURE OF	<input type="checkbox"/> 28 USC 157	<input type="checkbox"/> 430 BANKS & BANKING		
<input type="checkbox"/> 140 NEGOTIABLE	<input type="checkbox"/> 320 ASSAULT, LIBEL &	<input type="checkbox"/> 368 ASBESTOS PERSONAL	<input type="checkbox"/> 630 LIQUOR LAWS		<input type="checkbox"/> 450 COMMERCE/ACC		
<input type="checkbox"/> INSTRUMENT	<input type="checkbox"/> SLANDER	<input type="checkbox"/> INJURY PRODUCT	<input type="checkbox"/> 640 RR & TRUCK		<input type="checkbox"/> 460 DEPORTATION		
<input type="checkbox"/> 150 RECOVERY OF	<input type="checkbox"/> 330 FEDERAL	<input type="checkbox"/> LIABILITY	<input type="checkbox"/> 650 AIRLINE REGS	<input type="checkbox"/> 820 COPYRIGHTS	<input type="checkbox"/> 470 RACKETEER INFLU-		
<input type="checkbox"/> OVERPAYMENT &	<input type="checkbox"/> EMPLOYERS'	<input type="checkbox"/> 370 OTHER FRAUD	<input type="checkbox"/> 660 OCCUPATIONAL	<input type="checkbox"/> 830 PATENT	<input type="checkbox"/> ENCED & CORRUPT		
<input type="checkbox"/> ENFORCEMENT OF	<input type="checkbox"/> LIABILITY	<input type="checkbox"/> 371 TRUTH IN LENDING	<input type="checkbox"/> 680 SAFETY/HEALTH	<input type="checkbox"/> 840 TRADEMARK	<input type="checkbox"/> ORGANIZATION ACT		
<input type="checkbox"/> JUDGMENT	<input type="checkbox"/> 340 MARINE	<input type="checkbox"/> 380 OTHER PERSONAL			<input type="checkbox"/> (RICO)		
<input type="checkbox"/> 151 MEDICARE ACT	<input type="checkbox"/> 345 MARINE PRODUCT	<input type="checkbox"/> PROPERTY DAMAGE	<input type="checkbox"/> LABOR	<input type="checkbox"/> 861 MIA (1395FF)	<input type="checkbox"/> 480 CONSUMER CREDIT		
<input type="checkbox"/> 152 RECOVERY OF	<input type="checkbox"/> LIABILITY	<input type="checkbox"/> 385 PROPERTY DAMAGE	<input type="checkbox"/> 710 FAIR LABOR	<input type="checkbox"/> 862 BLACK LUNG (923)	<input type="checkbox"/> 490 CABLE/SATELLITE TV		
<input type="checkbox"/> DEFAULTED	<input checked="" type="checkbox"/> 350 MOTOR VEHICLE	<input type="checkbox"/> PRODUCT LIABILITY	<input type="checkbox"/> STANDARDS ACT	<input type="checkbox"/> 863 DIWC (405(g))	<input type="checkbox"/> 810 SELECTIVE SERVICE		
<input type="checkbox"/> STUDENT LOANS	<input type="checkbox"/> 355 MOTOR VEHICLE	<input type="checkbox"/> 385 PROPERTY DAMAGE	<input type="checkbox"/> 720 LABOR/MGMT	<input type="checkbox"/> 863 DIWW (405(g))	<input type="checkbox"/> 850 SECURITIES/		
<input type="checkbox"/> (EXCL VETERANS)	<input type="checkbox"/> 360 OTHER PERSONAL	<input type="checkbox"/> PRODUCT LIABILITY	<input type="checkbox"/> RELATIONS	<input type="checkbox"/> 864 SSID TITLE XVI	<input type="checkbox"/> COMMODITIES/		
<input type="checkbox"/> 153 RECOVERY OF	<input type="checkbox"/> INJURY		<input type="checkbox"/> LABOR/MGMT	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> EXCHANGE		
<input type="checkbox"/> OVERPAYMENT OF			<input type="checkbox"/> REPORTING &		<input type="checkbox"/> 875 CUSTOMER		
<input type="checkbox"/> VETERANS BENEFITS			<input type="checkbox"/> DISCLOSURE ACT		<input type="checkbox"/> CHALLENGE		
<input type="checkbox"/> 160 STOCKHOLDERS SUITS			<input type="checkbox"/> 740 RAILWAY LABOR ACT	<input type="checkbox"/> 881 AGRICULTURE ACTS	<input type="checkbox"/> 12 USC 3410		
<input type="checkbox"/> 190 OTHER CONTRACT			<input type="checkbox"/> OTHER LABOR	<input type="checkbox"/> 892 ECONOMIC	<input type="checkbox"/> 891 AGRICULTURE ACTS		
<input type="checkbox"/> 195 CONTRACT PRODUCT			<input type="checkbox"/> LITIGATION	<input type="checkbox"/> 893 ENVIRONMENTAL	<input type="checkbox"/> 892 ECONOMIC		
<input type="checkbox"/> LIABILITY			<input type="checkbox"/> 790 OTHER LABOR	<input type="checkbox"/> MATTERS	<input type="checkbox"/> 893 ENVIRONMENTAL		
<input type="checkbox"/> 196 FRANCHISE			<input type="checkbox"/> 791 EMPL RET INC	<input type="checkbox"/> 870 TAXES	<input type="checkbox"/> 894 ENERGY		
			<input type="checkbox"/> SECURITY ACT	<input type="checkbox"/> 871 IRS-THIRD PARTY	<input type="checkbox"/> ALLOCATION ACT		
				<input type="checkbox"/> 20 USC 7609	<input type="checkbox"/> FREEDOM OF		
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			<input type="checkbox"/> INFORMATION ACT		
<input type="checkbox"/> 210 LAND CONDEMNATION	<input type="checkbox"/> 441 VOTING	<input type="checkbox"/> 510 MOTIONS TO			<input type="checkbox"/> APPEAL OF FEE		
<input type="checkbox"/> 220 FORECLOSURE	<input type="checkbox"/> 442 EMPLOYMENT	<input type="checkbox"/> VACATE SENTENCE			<input type="checkbox"/> DETERMINATION		
<input type="checkbox"/> 230 RENT LEASE &	<input type="checkbox"/> 443 HOUSING	<input type="checkbox"/> 28 USC 2255			<input type="checkbox"/> UNDER EQUAL ACCESS		
<input type="checkbox"/> EJECTMENT	<input type="checkbox"/> 444 ACCOMMODATIONS	<input type="checkbox"/> 530 HABEAS CORPUS			<input type="checkbox"/> TO JUSTICE		
<input type="checkbox"/> 240 TORTS TO LAND	<input type="checkbox"/> 445 WELFARE	<input type="checkbox"/> 535 DEATH PENALTY			<input type="checkbox"/> 950 CONSTITUTIONALITY		
<input type="checkbox"/> 246 TORT PRODUCT	<input type="checkbox"/> 445 AMERICANS WITH	<input type="checkbox"/> 540 MANDAMUS & OTHER			<input type="checkbox"/> OF STATE STATUTES		
<input type="checkbox"/> LIABILITY	<input type="checkbox"/> DISABILITIES -	<input type="checkbox"/> 550 CIVIL RIGHTS			<input type="checkbox"/> 890 OTHER STATUTORY		
<input type="checkbox"/> 290 ALL OTHER	<input type="checkbox"/> EMPLOYMENT	<input type="checkbox"/> 555 PRISON CONDITION			<input type="checkbox"/> ACTIONS		
<input type="checkbox"/> REAL PROPERTY	<input type="checkbox"/> 446 AMERICANS WITH						
	<input type="checkbox"/> DISABILITIES -OTHER						
	<input type="checkbox"/> 440 OTHER CIVIL RIGHTS						

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.?
IF SO, STATE:

DEMAND \$ _____ OTHER _____ JUDGE _____ DOCKET NUMBER _____

Check YES only if demanded in complaint

JURY DEMAND: ☒ YES ☐ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(SEE REVERSE)

(PLACE AN x IN ONE BOX ONLY)

ORIGIN

- ☐ 1 Original Proceeding
 ☒ 2a. Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from (Specify District)
 ☐ 6 Multidistrict Litigation
 ☐ 7 Appeal to District Judge from Magistrate Judge Judgment
- ☐ 2b. Removed from State Court AND at least one party is a pro se litigant

(PLACE AN x IN ONE BOX ONLY)

BASIS OF JURISDICTION

- ☐ 1 U.S. PLAINTIFF
 ☐ 2 U.S. DEFENDANT
 ☐ 3 FEDERAL QUESTION (U.S. NOT A PARTY)
 ☒ 4 DIVERSITY

IF DIVERSITY, INDICATE
CITIZENSHIP BELOW.
(28 USC 1332, 1441)

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF DEF <input checked="" type="checkbox"/> <input type="checkbox"/>	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF <input type="checkbox"/> <input type="checkbox"/>	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF <input type="checkbox"/> <input type="checkbox"/>
CITIZEN OF ANOTHER STATE	<input type="checkbox"/> <input checked="" type="checkbox"/>	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	<input type="checkbox"/> <input type="checkbox"/>	FOREIGN NATION	<input type="checkbox"/> <input type="checkbox"/>

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

2180 Holland Avenue
 Apt. 6B
 Bronx, New York
 Bronx County

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

1 Kensington Court
 Old Greenwich, CT 06870
 Fairfield County

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ FOLEY SQUARE
(DO NOT check either box if this a PRISONER PETITION.)

DATE 4/18/08 SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT

☐ NO☒ YES (DATE ADMITTED Mo. 07 Yr. 1999)

RECEIPT #

Attorney Bar Code # 0373

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ is so Designated.

J Michael McMahon, Clerk of Court by _____ Deputy Clerk, DATED APR 21 2008

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

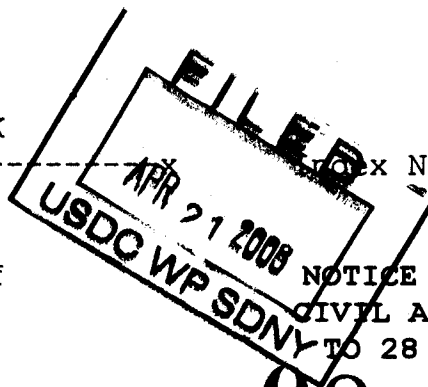
KALMAN KONSISTORUM,

Plaintiff

v.

CRAIG M. SCHIFF,

Defendant
-----x



Case No.: 300038/08

NOTICE OF REMOVAL OF
CIVIL ACTION PURSUANT
TO 28 U.S.C. §1441

08 cv. 3706
JUDGE COTE

TO: CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN, that Craig M. Schiff, the Defendant in the civil action in the SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF BRONX, hereby files this Notice of Removal to the United States District Court for the Southern District of New York pursuant to 28 U.S.C. Sections 1441 and 1446. A true copy of the State Court Notice of Removal of Civil Action (without its attachments) is attached hereto as Exhibit "A" and is incorporated herein by reference. True and correct copies of Plaintiff's Summons and Complaint are attached hereto as Exhibit "B".

This is a civil action seeking monetary damages in excess of \$75,000 of which this Court has original jurisdiction under 28 U.S.C. section 1332.

The United States District Court of the Southern District of New York has original jurisdiction of this matter based on

diversity of citizenship of the parties. The basis of this jurisdiction is provided in Section 1332(a) of Title 28 of the United States Code. This section states, in pertinent part, that the district courts should have original jurisdiction of all civil actions with a matter in controversy exceeds the sum of or value of \$75,000 exclusive of interest and cost, and is between citizens of different States.

As seen from the pleadings in this matter, plaintiff is a citizen of the State of New York and defendant is a citizen of the State of Connecticut. The Summons and Complaint further alleges that the matter in controversy is well in excess of \$75,000.

Concurrently with the filing of this Notice of Removal, defendant is giving notice to all known parties of this removal and the fact that this case is to be docketed in this Court and that this Court will grant relief to defendant as is proper under the circumstances.

Pursuant to 28 U.S.C. Section 1446(a) all process, pleadings and orders that have been served upon defendant to date in this matter are annexed to this Notice of Removal as Exhibit "B".

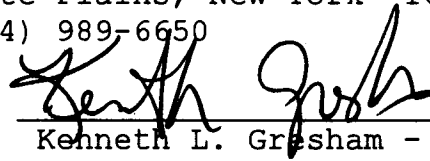
Pursuant to 28 U.S.C. 1446(d) a true and complete copy of this Notice of Removal will be submitted for filing with the

SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF BRONX.

DATED: April 18, 2008
White Plains, New York

Yours, etc.,
Eustace & Marquez
Attorneys for Defendant
Craig M. Schiff
Office and Post Office Address
1311 Mamaroneck Avenue
3rd Floor
White Plains, New York 10605
(914) 989-6650

By:



Kenneth L. Gresham - 0373

EXHIBIT "A"

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----x
KALMAN KONSISTORUM,

Index No.: 300038/08

Plaintiff

**NOTICE OF FILING OF
NOTICE OF REMOVAL**

v.

CRAIG M. SCHIFF,

Defendant
-----x

TO: **THE CLERK OF THE SUPREME COURT FOR THE STATE OF NEW YORK
AND TO ALL PARTIES TO THE ACTION HEREIN:**

PLEASE TAKE NOTICE THAT Defendant Craig M. Schiff, have
filed a Notice of Removal of this action in the United States
District Court for the Southern District of New York on April
18, 2008, pursuant to the provisions of 28 U.S.C. §§ 1441 and
1446. A Copy of the said Notice of Removal is annexed hereto as
Exhibit "A". This notice is filed pursuant to 28 U.S.C.

§1446(d).

DATED: April 18, 2008
White Plains, New York

Yours, etc.,
Eustace & Marquez
Attorneys for Defendant
Craig M. Schiff
Office and Post Office Address
1311 Mamaroneck Avenue
3rd Floor
White Plains, New York 10605
(914) 989-6650

By: 
Kenneth L. Gresham

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----x
KALMAN KONSISTORUM,

Index No.: 300038/08

Plaintiff

v.

AFFIDAVIT OF SERVICE

CRAIG M. SCHIFF,

Defendant
-----x

STATE OF NEW YORK)
 ss.
COUNTY OF WESTCHESTER)

Linda McKeiver, being duly sworn, deposes and says:

1. That I am over the age of eighteen years and not a party to this action.

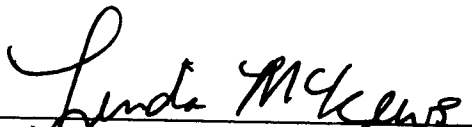
2. That on April *21*, 2008, I served upon:

Gratt & Associates, P.C.
Attorneys for Plaintiff,
Kalman Konsistorum
485 Lorimer Street
Brooklyn, New York 11211

a true copy of the annexed **NOTICE OF FILING OF NOTICE OF REMOVAL** by depositing it endorsed in a postpaid properly addressed wrapper, in a post office or, official depository under the exclusive care and custody of the United States Postal Service

within the State of New York, at the address designated by him or her upon the last paper served by him or her in the action.

DATED: April 21, 2008
White Plains, New York


Linda McKeiver

Sworn and subscribed
before me on April 21, 2008

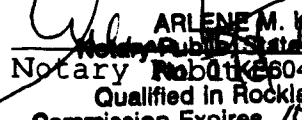

ARLENE M. KELLY
~~Notary Public, State of New York~~
Notary Public #6049160
Qualified in Rockland County
Commission Expires 10/10/10

EXHIBIT "B"

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
KALMAN KONSISTORUM,

Plaintiff,

-against-

CRAIG M. SCHIFF,

Defendant.
-----X

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to appear in the Supreme Court of the State of New York, County of BRONX, at the office of said Court at 851 Grand Concourse, in the County of BRONX, City and State of New York, within the time provided by law as noted below and to file your answer to the Verified Complaint in this action and to serve a copy of your answer on the plaintiffs' counsel within twenty (20) days after the service of this summons if same is served upon you personally or within thirty (30) days if served other than personally. In case of failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is the Plaintiff's residence in the County of BRONX, State of New York.

Dated: Brooklyn, New York
December 21, 2007


Index No.: 300038108
Filed On: 1/3/08

SUMMONS

BRONX COUNTY CLERK
08 JAN -3 PM 4:43

RECEIVED

Yours, etc.



Kevin D. Gratt
GRATT & ASSOCIATES, P.C.
Attorneys for Plaintiff
485 Lorimer Street
Brooklyn, New York 11211
(718) 963-3339

DEFENDANT'S ADDRESSES

CRAIG M. SCHIFF
1 Kensington Court
Old Greenwich, CT 06870

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
KALMAN KONSISTORUM,

Index No.:

Plaintiff,

-against-

VERIFIED COMPLAINT

CRAIG M. SCHIFF,

Defendant.
-----X

Plaintiff by his attorneys, GRATT & ASSOCIATES, P.C.,
complaining of the defendant herein, respectfully shows to this
Court and alleges as follows:

1. Plaintiff KALMAN KONSISTORUM is a resident of the
County of BRONX, State of New York.

2. Defendant CRAIG M. SCHIFF is a resident of the County of
FAIRFIELD, State of CONNECTICUT.

3. Upon information and belief, on or about December 3,
2007, defendant CRAIG M. SCHIFF owned, operated, maintained, and
controlled a certain motor vehicle bearing Connecticut State
license plate number MYSUV.

4. On or about December 3, 2007, Pelham Parkway South at or
near its intersection with Barnes Avenue, County of BRONX, State
of New York was and still is a public thoroughfare.

5. That at all times hereinafter mentioned, plaintiff KALMAN
KONSISTORUM was lawfully present and lawfully and rightfully

BRONX COUNTY CLERK
08 JAN -3 PM 4:43

RECEIVED

crossing Pelham Parkway South at or near its intersection with Barnes Avenue.

6. As plaintiff KALMAN KONSISTORUM was walking across Pelham Parkway South, suddenly without any notice or warning, the aforementioned motor vehicle of defendant CRAIG M. SCHIFF was caused to collide with plaintiff, causing plaintiff to be violently struck by said motor vehicle and causing plaintiff to fall to the ground.

7. The said collision and resulting injuries were caused wholly and solely by the defendant herein in the ownership, operation, maintenance and control of his above-mentioned automobile without any negligence on the part of the plaintiff contributing thereto.

8. Defendant was negligent, careless and reckless in the ownership, operation, maintenance and control of his above-mentioned automobile on the date, time and place aforementioned in that he failed to keep a proper lookout and watch; failed to keep his motor vehicle under proper and safe control; operated his motor vehicle at dangerous rates of speed; failed to observe proper laws and traffic signals; failed to be observant of the safety of the plaintiff; caused his above-mentioned motor vehicle to collide with the plaintiff without any negligence on the part of the plaintiff contributing thereto, and were further negligent in other respects.

9. As a result of the negligence, carelessness and recklessness of said defendant, plaintiff was caused to sustain serious bodily injuries as defined in Section 5102 of the New York State Insurance Law.

10. This action is specifically exempted from the provisions of CPLR 1601 pursuant to CPLR 1602 et seq.

11. As a result of the collision above mentioned, plaintiff KALMAN KONSISTORUM was rendered sick, sore, lame and disabled; was caused to suffer great pain and mental anguish; sustained serious injuries in and about his head, body, arms and limbs; sustained a fractured pelvis; and will be for a long time to come confined to his bed and home; was caused to and did expend large sums of money for medical care and attention; in addition the plaintiff had sustained a severe shock to his nervous system which has detracted considerably from his general health and has sustained a resultant loss therefrom.


12. That as a result of the foregoing, plaintiff KALMAN KONSISTORUM demands judgment against the defendants in a sum that exceeds the jurisdictional amount of all courts except the Supreme Court of the State of New York.

WHEREFORE, plaintiff KALMAN KONSISTORUM demands judgment against the defendant in a sum that exceeds the jurisdictional amount of all courts except the Supreme Court of the State of

New York; together with the costs and disbursements of this action.

Dated: Brooklyn, New York
December 21, 2007

Yours, etc.



Kevin D. Gratt
GRATT & ASSOCIATES, P.C.
Attorneys for Plaintiff
485 Lorimer Street
Brooklyn, New York 11211
(718) 963-3339

ATTORNEY'S VERIFICATION

STATE OF NEW YORK)

COUNTY OF KINGS)

I, Kevin D. Gratt, an attorney duly admitted to practice law before the Courts of the State of New York make this affirmation pursuant to the provisions of Rule 2106 of the Civil Practice Law and Rules under the penalties of perjury.

I am an officer in the law firm of GRATT & ASSOCIATES, P.C., attorney of record for KALMAN KONSISTORUM, the plaintiff in the instant action.

I have read the foregoing Complaint and know the contents thereof; the same is true to my own knowledge, except as to those matters therein stated to be upon information and belief, and as to those matters I believe them to be true; that my grounds for belief as to matters not herein stated to be alleged upon my own knowledge are investigations and information received by myself in the course of my duties as an attorney for the plaintiff.

This affirmation is submitted by the undersigned because the plaintiff does not reside within the County of Kings wherein I maintain my office.

DATED: Brooklyn, New York
December 21, 2007


Kevin D. Gratt

Index No.:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

KALMAN KONSISTORUM,

Plaintiff(s)

- against -

CRAIG M. SCHIFF,

Defendant(s).

SUMMONS AND VERIFIED COMPLAINT

GRATT & ASSOCIATES, P.C.
Attorneys for Plaintiff
485 Lorimer Street
Brooklyn, New York 11211
(718) 963-3339

To:

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated:

Attorney(s) for

PLEASE TAKE NOTICE that the within is a (certified) true copy of
a
Entered in the office of the clerk of the within named court on
Dated:

GRATT & ASSOCIATES, P.C.
Attorneys for Plaintiff
485 Lorimer Street
Brooklyn, New York 11211

To:

Attorney(s) for

EXHIBIT "C"

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----x
KALMAN KONSISTORUM,

Index No.: 300038/08

Plaintiff

VERIFIED ANSWER TO
COMPLAINT

v.

CRAIG M. SCHIFF,

Defendant
-----x

Defendant, Craig M. Schiff, by his attorneys, EUSTACE
& MARQUEZ, answers the Complaint of the Plaintiff by
stating as follows:

1. Denies, upon information and belief, the allegations
of paragraphs 5, 6, 7, 8, 9, 11 and 12.

2. Denies having knowledge or information sufficient to
form a belief as to the truth of the allegations of paragraph 1.

3. Denies having knowledge or information sufficient to
form a belief as to the truth of the allegations of paragraphs
3, 4 and 10 and respectfully refers all questions of law to this
Honorable Court.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE THIS
ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

4. The injuries alleged to have been suffered by the
Plaintiff were caused, in whole or part, by the conduct of
Plaintiff. Plaintiff's claims therefore are barred or diminished

in the proportion that such culpable conduct of Plaintiff bears to the total culpable conduct causing the damages.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE THIS
ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

5. The injuries and damages alleged in the Complaint were caused or contributed to by the culpable conduct including contributory negligence, assumption of the risk and/or product misuse of persons over whom this Defendant had no authority or control.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE THIS
ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

6. That this Court has not acquired personal jurisdiction over this answering Defendant.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE THIS
ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

7. The Emergency Doctrine applies to the facts and circumstances of this action.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE THIS
ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

8. The Plaintiff is precluded from maintaining this action by Insurance Law Article 51 in that Plaintiff has failed to sustain a serious injury or economic loss greater than the basic economic loss as defined by that law.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE THIS
ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

9. That recovery, if any, by the Plaintiff shall be reduced by the amounts paid or reimbursed by collateral sources in accordance with CPLR 4545(c).

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE
THIS ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

10. That if it is determined that this answering Defendant is responsible for the acts alleged in the Complaint then Plaintiff failed to take appropriate action to mitigate any damages.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE THIS
ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

11. The injuries and damages alleged in the Complaint of the Plaintiff were caused or contributed to by Plaintiff's culpable conduct in assuming the risk under the conditions and circumstances existing.

WHEREFORE, this Defendant demands judgment dismissing the Complaint, together with costs and disbursements, and in the event any judgment or settlement is recovered herein against this Defendant, then this Defendant further demands that such judgment be reduced by the amount which is proportionate to the degree of culpability of any plaintiff, and this Defendant further demands judgment against each other party on the respective crossclaims

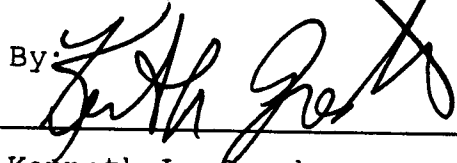
and/or counterclaims.

DATED: April 18, 2008
White Plains, New York

Yours, etc.,

EUSTACE & MARQUEZ
Attorneys for Defendant
CRAIG M. SCHIFF
Office and Post Office
Address
1311 Mamaroneck Avenue
3rd Floor
White Plains, New York 10605
(914) 989-6650

By:


Kenneth L. Gresham

To:

Gratt & Associates, P.C.
Attorneys for Plaintiff, Kalman Konsistorum
485 Lorimer Street
Brooklyn, New York 11211

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----x
KALMAN KONSISTORUM,

Plaintiff

v.

CRAIG M. SCHIFF,

Defendant
-----x

Index No.: 300038/08

VERIFICATION

Kenneth L. Gresham, an attorney duly admitted to practice law before the Courts of New York State, hereby affirms under the penalties of perjury pursuant to CPLR 2106:

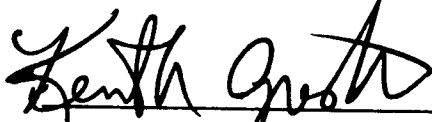
I am a member of the firm of EUSTACE & MARQUEZ, attorneys for the Defendant, Craig M. Schiff.

I submit the following statement upon information and belief, based upon an inspection of the records maintained by this office, which records I believe to be true.

That I have read the contents of the attached UNVERIFIED ANSWER TO COMPLAINT for Defendant Craig M. Schiff and believe it to be true based on information available or maintained by this firm. I make this verification because this Defendant is either a foreign

corporation or is not located in Westchester County.

DATED: April 18, 2008
White Plains, New York


Kenneth L. Gresham

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----x
KALMAN KONSISTORUM,

Plaintiff

v.

CRAIG M. SCHIFF,

Defendant
-----x

Index No.: 300038/03

NOTICE PURSUANT TO
CPLR 2103

PLEASE TAKE NOTICE that Defendant **Craig M. Schiff**, by attorneys, **EUSTACE & MARQUEZ**, hereby serve(s) Notice upon you pursuant to Rule 2103 of the Civil Practice Law and Rules that it **expressly rejects** service of papers in this matter upon them by electronic means.

PLEASE TAKE FURTHER NOTICE that waiver of the foregoing may only be affected by express prior written consent to such service by **EUSTACE & MARQUEZ** and by placement thereby of **EUSTACE & MARQUEZ** electronic communication number in the address block of papers filed

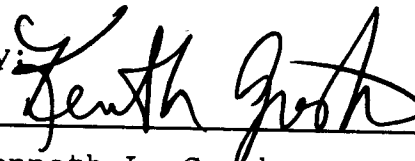
with the Court.

DATED: April 18, 2008
White Plains, New York

Yours, etc.,

EUSTACE & MARQUEZ
Attorneys for Defendant
CRAIG M. SCHIFF
Office and Post Office
Address
1311 Mamaroneck Avenue
3rd Floor
White Plains, New York 10605
(914) 989-6650

By:

A handwritten signature in black ink, appearing to read "Kenneth L. Gresham", written over a horizontal line.

Kenneth L. Gresham

To:

Gratt & Associates, P.C.
Attorneys for Plaintiff, Kalman Konsistorum
485 Lorimer Street
Brooklyn, New York 11211

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----x
KALMAN KONSISTORUM,

Plaintiff

v.

CRAIG M. SCHIFF,

Defendant
-----x

Index No.: 300038/08

**COMBINED DISCOVERY
DEMANDS AND NOTICE OF
DEPOSITION**

PLEASE TAKE NOTICE, that Defendant Craig M. Schiff, by attorneys, **EUSTACE & MARQUEZ**, demands that each adverse party afford us the disclosure which this notice and demand specifies:

DEPOSITIONS OF ADVERSE PARTIES UPON ORAL EXAMINATION

A. Each adverse party is to appear for deposition upon oral examination pursuant to CPLR 3107:

(1) At this date and time: May 23, 2008 at 10:00 am

(2) At this place: Eustace & Marquez

1311 Mamaroneck Avenue

3rd Floor

White Plains, NY 10605

Pursuant to CPLR 3106(d) we designate the following as the identity, description or title of the particular officer, director, member, or employee of the adverse party specified whose deposition we desire to take: ALL PARTIES

C. Each deposition witness thus examined is to produce at such time and place, pursuant to CPLR 3111, all books, papers, and other things which are relevant to the issues in the action and within that adverse party's possession, custody, or control to be marked as exhibits, and used on the examination.

PARTY STATEMENTS

Each adverse party is to serve on us, pursuant to CPLR 3101(e) and CPLR 3120, within thirty (30) days from the service of this Demand, a complete and legible copy of any statement made by or taken from any individual party or any officer, agent, or employee of said party.

INSURANCE POLICIES

Each adverse party is to serve, pursuant to CPLR 3101(f) and CPLR 3120, within thirty (30) days from the service of this Demand, a complete and legible copy of each primary or excess insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of any judgment which may be entered in this action or to indemnify or reimburse for payments made to satisfy any such judgment.

ACCIDENT REPORTS

Each adverse party is to serve, pursuant to CPLR 3101(g) and CPLR 3120, within thirty (30) days from service

of this Demand, a complete and legible copy of every written report of the accident or other event alleged in the complaint prepared in the regular course of that adverse party's business operations or practices.

PHOTOGRAPHS AND VIDEOTAPES

Each adverse party is to serve within thirty (30) days from the service of this Demand, complete and legible photographic or videotape reproductions of any and all photographs, motion pictures, maps, drawings, diagrams, measurements, surveys of the scene of the accident or equipment or instrumentality involved in the action or photographs of persons or vehicles involved (if applicable) made either before, after or at the time of the events in question, including any photographs or videotapes made of the plaintiff at any time since the incident referred to in the Complaint.

WITNESSES

Each adverse party is to serve within thirty (30) days from the service of this Demand, the name and address of each witness to any of the following:

1. The accident, occurrence or any other event set forth in the complaint.
2. Any fact tending to prove actual or constructive notice of any condition which may give rise to the

liability of any person, whether or not a party, for any damages alleged in this action.

3. Any admission, statement, writing or act of our client.

EXPERT WITNESS MATERIAL

Each adverse party is to serve, pursuant to CPLR 3101(d)(1), within thirty (30) days from the service of this request, a statement specifying all of the following data as to each person whom that adverse party expects to call as an expert witness at trial:

- A. The identity of each expert;
- B. The subject matter on which each expert is expected to testify, disclosed in reasonable detail;
- C. The substance of the facts and opinions on which each expert is expected to testify;
- D. The qualifications of each expert; and
- E. A summary of the grounds for each expert's opinion.

PLEASE TAKE FURTHER NOTICE that we will object at trial to the offer of any proof of an expert's qualifications which are different from or additional to those which the adverse party calling the expert had disclosed in reference to sub-paragraph D.

COLLATERAL SOURCE INFORMATION

Each plaintiff seeking to recover for the cost of medical care, dental care, custodial care or rehabilitation services, loss of earnings or other economic loss is to serve, pursuant to CPLR 4545(c), within thirty (30) days from the service of this Demand, a statement of all past and future cost and expense which has been or will, with reasonable certainty, be replaced or indemnified, in whole or in part, from any collateral source such as insurance (except life insurance), social security, workers' compensation, or employee benefit programs. Each such statement is to set forth the name, address, and insurance policy (or other account) number of each collateral source payor; and, separately stated for each payor, a list specifying the date and amount of each payment and the name, address, and social security number or other taxpayer identification number of each payee.

PRODUCTION OF MEDICAL REPORTS AND AUTHORIZATIONS

Each plaintiff is to serve upon and deliver to us within thirty (30) days from the service of this Demand:

Medical Reports and Bills: Copies of the medical reports and bills of those health professionals who have previously treated or examined the plaintiff. Those reports shall include a detailed recital of the injuries and

conditions as to which testimony will be offered at the trial, referring to and identifying those diagnostic tests and technicians' reports which will be offered at the trial.

Medical Authorizations: Duly executed and acknowledged written medical authorizations, complying with the Health Insurance Portability and Accountability Act ("HIPAA"), 45 C.F.R. §164.508(a), (using attached form) permitting all parties to obtain and make copies of the records and notes including any intake sheets, diagnostic tests, X-Rays, MRI's and cat scan films, of all treating and examining hospitals, physicians and other medical professionals.

PRODUCTION OF RECORDS AND AUTHORIZATIONS

Each plaintiff is to serve upon and deliver to us within thirty (30) days from the service of this demand duly executed, fully addressed and acknowledged written authorizations permitting all parties to obtain and make copies of each of the following:

A. All workers' compensation records and reports of hearings pertaining to the incident alleged to have occurred in plaintiff's complaint maintained by the workers' compensation Board and workers' compensation carrier.

B. All records of present and past employment of plaintiff.

C. All records in the no-fault file of any carrier issuing benefits to the plaintiff arising out of the incident alleged to have occurred in the complaint.

D. All records of the Internal Revenue Service filed by the plaintiff for the calendar year prior to the date of the incident alleged in the complaint and for the two subsequent years. Please use IRS form 4506 and attach 2 copies of identification of the plaintiff, with photo and signature as required by the IRS.

E. All records of schools attended by plaintiff.

F. All records of each collateral source that has provided and/or in the future will be providing any payment or reimbursement for expenses incurred because of this incident.

NAMES AND ADDRESSES OF ATTORNEYS

Each adverse party is to serve on us, within thirty (30) days from service of this Demand, the names and addresses of all attorneys having appeared in this action on behalf of any adverse party.

PLEASE TAKE FURTHER NOTICE THAT THESE ARE CONTINUING DEMANDS, and that each demand requires that an adverse party who acquires more than thirty (30) days from the

service of this demand any document, information, or thing (including the opinion of any person whom the adverse party expects to call as an expert witness at trial) which is responsive to any of the above demands, is to give us prompt written advice to that effect; and, within thirty (30) days (but no less than sixty (60) days before trial), is to serve all such information on us and allow us to inspect, copy, test, and photograph each such document or thing.

PLEASE TAKE FURTHER NOTICE that we will object at trial, and move to preclude as to any adverse party who does not timely identify any witness, serve any report, or produce any document, information, or thing which is responsive to a discovery demand set forth in any of the ensuing paragraphs:

A. From calling any event or notice witness not identified to us or medical expert whose reports have not been served on us;

B. From calling any other expert witness whose identity, qualifications, and expected fact and opinion testimony (together with a summary of the grounds for each such opinion) have not been served on us;

C. From putting in evidence any exhibit not served on us or produced for us to discover, inspect, copy, and

photograph in accordance with any of the ensuing paragraphs; and


D. From offering any other proof not timely disclosed pursuant to a court order in this action.

DATED: April 18, 2008
White Plains, New York

Yours, etc.,

EUSTACE & MARQUEZ
Attorneys for Defendant
CRAIG M. SCHIFF
Office and Post Office
Address
1311 Mamaroneck Avenue
3rd Floor
White Plains, New York 10605
(914) 989-6650

By:



Kenneth L. Gresham

To:

Gratt & Associates, P.C.
Attorneys for Plaintiff, Kalman Konsistorum
485 Lorimer Street
Brooklyn, New York 11211

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
KALMAN KONSISTORUM,

Plaintiff

v.

CRAIG M. SCHIFF,

Defendant
-----X

Index No.: 300038/08

**DEMAND FOR VERIFIED
BILL OF PARTICULARS**

PLEASE TAKE NOTICE, Defendant, Craig M. Schiff, by attorneys, Eustace & Marquez, demands pursuant to CPLR 3041-3044, that each Plaintiff furnish, within thirty (30) days of the date of this demand a **Verified** Bill of the following particulars:

A. Liability Issues:

1. The legal name, address, date of birth and social security number of each plaintiff,
2. The date and approximate time of day of the alleged accident.
3. The location of the alleged accident.
4. (a) A statement of the acts or omissions constituting any negligence or other culpable conduct claimed against this defendant.

- (b) If breach of warranty is alleged, state whether said warranty was:
- i. expressed or implied;
 - ii. oral or written;
 - iii. if written, set forth a copy thereof;
and
 - iv. if oral, state by whom and to whom the alleged warranty was made, specifying the time, place and persons in sufficient detail to permit identification.

5. If actual notice is claimed, a statement of when, by whom and to whom actual notice was given and whether such notice was in writing; also, if such notice was in writing, the statement is to include the name and address of anyone who has any copy of it.

6. If constructive notice is claimed, a statement of how long any allegedly dangerous or defective condition existed before the occurrence and who has first-hand knowledge of any such facts.

7. If any violation is claimed, a citation to each statute, ordinance, regulation, and other federal, state, or local rule which it is claimed that any defendant we represent has violated.

8. If any prior similar occurrence is claimed, a statement of its date, approximate time of day and approximate location.

9. If any subsequent repair or other remedial action is claimed, a statement of its date, approximate time of day, approximate location, who made such repair or took such other action and who has first-hand knowledge of either.

B. Damage Issues: Personal Injury:

10. A statement of the injuries claimed to have been sustained by plaintiff as a result of the accident and a description of any injuries claimed to be permanent.

11. In any action under Ins. Law, §5104(a), for personal injuries arising out of negligence in the use or operation of a motor vehicle in this state, in what respect and to what extent any plaintiff has sustained:

(a) serious injury, as defined by Insurance Law, 5102(b);

(b) economic loss greater than basic economic loss, as defined by Insurance Law, 5102 (a).

12. If plaintiff was treated at a hospital or hospitals, the name and address of each hospital and the exact dates of admission or treatment at each.

13. The name and address of all medical professionals that treated or examined plaintiffs with regard to the injuries claimed, and the exact dates of treatment received from each.

14. If loss of earnings is claimed, the name and address of plaintiff's employer, the nature of plaintiff's employment, and the exact dates that the plaintiff was incapacitated from employment.

15. A statement of the exact dates that each plaintiff was:

- (a) hospitalized;
- (b) confined to bed;
- (c) confined to house;

16. Total amounts each plaintiff claims as special damages for:

- (a) physicians' services;
- (b) medical supplies
- (c) loss of earnings to date, with the name(s) and address(es) of plaintiff's employer(s);
- (d) loss of earnings in the future, stating how the figure was calculated;
- (e) hospital expenses;
- (f) nurses' services;
- (g) any other special damages claimed.

17. If any plaintiff claims loss of services, a statement of all such losses claimed, including the nature and extent of the lost services and all special damages claimed.

18. The name, address and amounts received from each collateral source that has paid or reimbursed plaintiff for any of the expenses incurred as a result of this accident.

DATED: April 18, 2008
White Plains, New York

Yours, Etc.,
EUSTACE & MARQUEZ
Attorneys for Defendant
CRAIG M. SCHIFF
Office and Post Office
Address
1311 Mamaroneck Avenue
3rd Floor
White Plains, New York 10605
(914) 989-6650

By:


Kenneth L. Gresham

To:
Gratt & Associates, P.C.
Attorneys for Plaintiff, Kalman Konsistorum
485 Lorimer Street
Brooklyn, New York 11211

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----x
KALMAN KONSISTORUM,

Index No.: 300038/08

Plaintiff

v.

AFFIDAVIT OF SERVICE

CRAIG M. SCHIFF,

Defendant

-----x
STATE OF NEW YORK)

ss.

COUNTY OF WESTCHESTER)

Janet Salaycik-Formisano, being duly sworn, deposes and
says:

That I am over the age of eighteen years (18) and not a
party to this action.

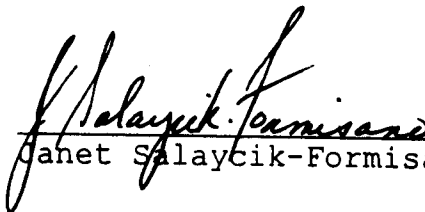
That on April 18, 2008, I served upon:

Gratt & Associates, P.C.
Attorneys for Plaintiff, Kalman Konsistorum
485 Lorimer Street
Brooklyn, New York 11211

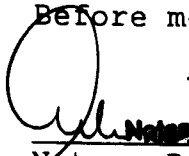
A true copy of the annexed **VERIFIED ANSWER TO COMPLAINT,
NOTICE PURSUANT TO CPLR 2103, DEMAND FOR VERIFIED BILL OF
PARTICULARS AND VARIOUS DISCOVERY DEMANDS** by depositing it
endorsed in a postpaid properly addressed wrapper, in a
post office or, official depository under the exclusive
care and custody of the United States Postal Service within
the State of New York, at the address designated by him or

her upon the last paper served by him or her in the action.

DATED: April 18, 2008
White Plains, New York


Janet Salaycik-Formisano

Sworn and subscribed
Before me on April 18, 2008


ARLENE M. KELLY
~~Notary Public, State of New York~~
~~Notary Public, State of New York~~
Qualified in Rockland County
Commission Expires ~~6/15/10~~

Index No.: 300038/08

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

KALMAN KONSISTORUM,

Plaintiff

against

CRAIG M. SCHIFF,

Defendant

VERIFIED ANSWER TO COMPLAINT, NOTICE PURSUANT TO CPLR 2103,
DEMAND FOR VERIFIED BILL OF PARTICULARS AND VARIOUS
DISCOVERY DEMANDS

EUSTACE & MARQUEZ
Attorneys for Defendant
Craig M. Schiff
Office and Post Office Address
1311 Mamaroneck Avenue
3rd Floor
White Plains, New York 10605
(914) 989-6650

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----x
KALMAN KONSISTORUM,

Index No.: 300038/08

Plaintiff

AFFIDAVIT OF SERVICE

v.

CRAIG M. SCHIFF,

Defendant

-----x

STATE OF NEW YORK)
 ss.
COUNTY OF WESTCHESTER)

Linda McKeiver, being duly sworn, deposes and says:

1. That I am over the age of eighteen years and not a party to this action.

2. That on April *21*, 2008, I served upon:

Gratt & Associates, P.C.
Attorneys for Plaintiff,
Kalman Konsistorum
485 Lorimer Street
Brooklyn, New York 11211


a true copy of the annexed **NOTICE OF REMOVAL OF CIVIL ACTION PURSUANT TO 28 U.S.C. §1441** by depositing it endorsed in a postpaid properly addressed wrapper, in a post office or, official depository under the exclusive care and custody of the United States Postal Service within the State of New York, at

the address designated by him or her upon the last paper served by him or her in the action.

DATED: April 21, 2008
White Plains, New York


Linda McKeiver

Sworn and subscribed
before me on April 21, 2008


ARLENE M. KELLY
Notary Public, State of New York
No. 04RE0049180
Qualified in Rockland County
Commission Expires 10/10/10

Index No.: 300038/08

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

KALMAN KONSISTORUM,

Plaintiff

-against-

CRAIG M. SCHIFF,

Defendant

NOTICE OF REMOVAL OF CIVIL ACTION PURSUANT TO 28 U.S.C. §1441
OF REMOVAL

EUSTACE & MARQUEZ
Attorneys for Defendant
Craig M. Schiff
Office and Post Office Address
1311 Mamaroneck Avenue
3rd Floor
White Plains, New York 10605
(914) 989-6650